

EXHIBIT A

TO:

**RESPONSE OF DEFENDANTS NEW YORK UNIVERSITY SCHOOL OF MEDICINE
AND NEW YORK UNIVERSITY HOSPITALS CENTER TO THE STATEMENT OF
UNDISPUTED MATERIAL FACTS OF DEFENDANTS GENESIS GENETICS
INSTITUTE, LLC AND MARK HUGHES PURSUANT TO LOCAL CIVIL RULE 56.1**

2981.101

Grossbaum v.
Genesis GeneticsMark Hughes, M.D.
February 19, 2009

Page 1	Page 3
<p>[1] UNITED STATES DISTRICT COURT [2] DISTRICT OF NEW JERSEY</p> <p>[3] CASE NO. 07-CV-1359 (HAA)</p> <p>[4] CHAYA GROSSBAUM and [5] MENACHEM GROSSBAUM, her [6] spouse, individually and as [7] guardians ad litem of the [8] infant ROSIE GROSSBAUM, [9] DEPOSITION UPON ORAL [10] EXAMINATION OF: [11] MARK R. HUGHES, M.D.</p> <p>[12] Plaintiffs, [13] vs. [14] GENESIS GENETICS INSTITUTE, LLC, [15] of the State of Michigan, [16] MARK R. HUGHES, NEW YORK [17] UNIVERSITY SCHOOL OF MEDICINE [18] and NEW YORK UNIVERSITY HOSPITAL [19] CENTER, both corporations in the [20] State of New York, ABC CORPS, [21] 1-10, and JOHN DOES 1-10 [22] Defendants. [23] - - - - - x</p> <p>[24] TRANSCRIPT of the deposition of the witness, [25] called for Oral Examination in the above-captioned matter, said deposition being taken pursuant to Notice, taken by and before KATHLEEN HAGEN, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, at the law offices of NUSBAUM, STEIN, GOLDSTEIN, BRONSTEIN & KRON, P.A., 20 Commerce Boulevard, Succasunna, New Jersey, on Thursday, February 19, 2009, commencing at 10:30 a.m.</p> <p>[26] PHILIP A. FISHMAN [27] COURT REPORTING AGENCY [28] 89 Headquarters Plaza [29] 4 Speedwell Avenue, Suite 440 [30] Morristown, New Jersey 07960 [31] (973) 285-5331 [32] Fax (732) 605-9391</p>	<p>[1] INDEX</p> <p>[2] WITNESS DIRECT CROSS REDIRECT</p> <p>[3] MARK R. HUGHES, M.D., PhD 4 63</p> <p>[4] By Mr. Stein 61</p> <p>[5] By Mr. Hamad</p>
Page 2	Page 4
<p>[1] A P P E A R A N C E S:</p> <p>[2] NUSBAUM, STEIN, GOLDSTEIN, BRONSTEIN & KRON, P.A. [3] By: Lewis Stein, Esq. and Lynn Harris, Paralegal [4] 20 Commerce Boulevard [5] Succasunna, New Jersey 07676 [6] (973) 584-1400 [7] Appearing on behalf of Plaintiffs</p> <p>[8] STEPHEN N. LEUCHTMAN, P.C. [9] 23855 Northwestern Highway [10] Southfield, Michigan 48075 [11] (248) 948-9696, Ext. 143 [12] Appearing on behalf of Defendant, Mark R. Hughes, M.D.</p> <p>[13] MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN, ESQS. [14] By: Jay A. Hamad, Esq. [15] 425 Eagle Rock Ave., Suite 302 [16] Roseland, New Jersey 07068 [17] (973) 618-4158 [18] jahamad@mdwcg.com [19] Appearing on behalf of Defendant, NYU</p>	<p>[1] Direct - Mark R. Hughes, M.D., Ph.D.</p> <p>[2] M-A-R-K R. H-U-G-H-E-S, M.D., Ph.D., having offices [3] at Genesis Genetics Institute, LLC, 5555 Conner Avenue, [4] A22064, Detroit, Michigan, 48213, called as a witness, [5] having been duly sworn, was examined and testified as [6] follows:</p> <p>[7] DIRECT EXAMINATION BY MR. STEIN:</p> <p>[8] Q Dr. Hughes, as you know, we're here to [9] take your deposition. I take it that you have [10] previously submitted to a deposition?</p> <p>[11] A Yes.</p> <p>[12] Q About how many occasions?</p> <p>[13] A Twice.</p> <p>[14] Q Well, before I ask you about those, [15] permit me to give you some guidelines and instructions, [16] which we should operate under during this question and [17] answer session. First, I should tell you that my [18] questions and your answers are being recorded by the [19] lady who sits to my right and your left, who is a [20] Certified Shorthand Reporter, and if this case goes to [21] trial, what you say here may be used at trial, so you [22] should treat this question and answer session with the [23] same onus as if you were giving testimony in open [24] court, even though we're here in the law office. Do [25] you understand that?</p> <p>[26] A Um-hum, I do.</p>

Mark Hughes, M.D.
February 19, 2009

Grossbaum v.
Genesis Genetics

<p>Direct - Mark R. Hughes, M.D., Ph.D. Page 13</p> <p>[1] there any other people who hold the position of [2] director, board of directors? [3] A It's an LLC, and there are two of us. [4] Q And who is the other person? [5] A Stanley Dickson. [6] Q D-i-x-o-n? [7] A No, c-k. [8] Q Is Mr. Dickson an active participant in [9] the operation of Genesis Genetics? [10] A Yes. [11] Q And what position does he hold, in terms [12] of his active involvement, other than being a director? [13] A Assistant in business management. [14] Q All right. Is Sharon Wilsey, Matt Studt, [15] S-t-u-d-t, and Susan Brown still employed at Genesis [16] Genetics? [17] A Yes. [18] Q Does Genesis Genetics advertise its [19] services in any print media? [20] A No. [21] Q In any television or other media? [22] A We have an internet web site. [23] Q Your laboratory is subject to [24] accreditation by a reviewing agency? [25] A Yes.</p>	<p>Direct - Mark R. Hughes, M.D., Ph.D. Page 15</p> <p>[1] my notes, but not otherwise. [2] Q All right. So is your memory of this [3] particular case, and when I refer to "case", I'm not [4] referring to the legal case, but I'm referring to their [5] request for consultation with you, strictly what [6] appears to be in the records that were created at the [7] time that you performed the PGD services? [8] A Yes. [9] Q Could you tell us when, if you recall, you [10] first became aware that this couple gave birth to a [11] baby that suffers this cystic fibrosis mutation? [12] A I found out from the genetic counselor, after [13] the baby was born, we were informed that they had a [14] healthy child, in fact, we were informed first that [15] they had twins, but I don't remember the exact date. [16] No, it might be in the records, but I don't remember. [17] Q Would it have been sometime in the close [18] proximity to when the baby was born, is it closer to [19] that date than now or the institution of the lawsuit? [20] A No, I found out about it some months after the [21] baby was born, but I don't remember when that was. [22] Q All right. And do you, at this moment, [23] recall the method by which you found out? [24] A No, I think the genetic counselor told me. [25] Q And that genetic counselor would have been</p>
<p>Direct - Mark R. Hughes, M.D., Ph.D. Page 14</p> <p>[1] Q And which reviewing agency? [2] A CLIA. [3] Q And has it ever been refused [4] accreditation? [5] A Not only that, they've never found a violation [6] that needed mediation. [7] Q And on how many occasions has that review [8] taken place? [9] A Three. [10] Q Do you have a personal recollection of any [11] of the communications with the plaintiffs in this case? [12] MR. HAMAD: Objection to form. [13] MR. STEIN: Can you tell me your grounds [14] for objection as to form? [15] MR. HAMAD: I will. I think the question [16] is vague, in the sense that's it's asking a [17] communication, but there's -- that could [18] encompass any documents that the people signed, [19] any correspondence or any telephone [20] conversations, face-to-face discussions. I [21] don't know if -- that's my objection. I hope [22] you will be more specific. [23] Q Did you understand my question? [24] A I understood it, but I don't know how to answer [25] it. I remember interacting with this couple because of</p>	<p>Direct - Mark R. Hughes, M.D., Ph.D. Page 16</p> <p>[1] at NYU or someplace else? [2] A Frankly, I don't remember. [3] Q You received a reference in this case from [4] the NYU Medical Center, is that correct? [5] MR. HAMAD: Objection to form. [6] Q You referred -- these people, the [7] Grossbaums, were referred to you for PGD study by the [8] New York University Medical Department? [9] A No, we don't call it that, because I'm not [10] practicing medicine. They asked our laboratory, they [11] ordered a laboratory test for us to perform for their [12] patient, yes. [13] Q Okay. Can you tell me how you define, in [14] your last answer, the words "practicing medicine"? [15] A Well, you have a license, you have to have [16] hospital privileges, you have to see patients, and I [17] don't do any of those things. [18] Q Are you licensed as a physician in any [19] state? [20] A No. [21] Q Have you sought licensure in any state? [22] A Well, I had in Texas, because I did my training [23] there; when you're in training, you have to have a [24] license. [25] Q Okay. But you cease to be licensed in</p>

**Grossbaum v.
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February 19, 2009**

Direct - Mark R. Hughes, M.D., Ph.D.

Page 17

[1] Texas at this time, is that right?

[2] A It's in some limbo state of some type, I don't

[3] know what it's actually called. I have to continue to

[4] do CME credits, which I wasn't doing, so they put me in

[5] some inactive state of some type.

[6] Q And you have not sought licensure in any

[7] other state, is that correct?

[8] A That's correct.

[9] Q Well, has your laboratory been referred

[10] for analysis of genetic materials from NYU, prior to

[11] the time of the Grossbaum family?

[12] A Many times.

[13] Q Can you give me some indication of the

[14] number, approximately?

[15] A Certainly 50.

[16] Q Over what period of time?

[17] A I don't remember when it started, but through

[18] now.

[19] Q Okay. And when you estimate 50, are you

[20] estimating it 50, including right up to the present

[21] time?

[22] A Yes.

[23] Q Other than the Grossbaums, are you aware

[24] of any other laboratory studies that you did, that

[25] resulted in a CF baby being born to a couple?

Direct - Mark R. Hughes, M.D., Ph.D.

Page 19

[1] your attention as being born with cystic fibrosis, that

[2] you did PGD testing on?

[3] A Four, I believe.

[4] Q And these four are the four you mentioned?

[5] A Yes.

[6] Q And how many babies would you say you

[7] tested for cystic fibrosis mutations, in doing PGD

[8] testing, in total, over the time that you've been doing

[9] this work?

[10] A I do not know, but over 1000.

[11] Q Is there a particular ethnic group of

[12] people who have a higher incidence of cystic fibrosis

[13] mutations than others?

[14] A Caucasians.

[15] Q Now, it's reported that the testing for

[16] the screening testing for the CSF gene is 97 percent

[17] effective within Ashkanazi Jews, is that correct?

[18] A Well, it's variable, depending on who's doing

[19] the testing and how many different mutations they're

[20] testing for, unless you actually sequence the gene

[21] entirely, you can't have a perfect test, and even then,

[22] you don't have a perfect test, but you reduce that

[23] percentage closer and closer to zero risk of having a

[24] mutation, the more mutations you test for. So some

[25] laboratories test for 20, some test for 40, some test

Direct - Mark R. Hughes, M.D., Ph.D.

Page 18

[1] A Yes.

[2] Q On how many occasions?

[3] A Four.

[4] Q Can you tell me when the most recent

[5] occasion was?

[6] A No, I don't remember the date.

[7] Q Have any of those four occasions occurred

[8] since the Grossbaum baby was born?

[9] A Yes.

[10] Q Can you tell me how many of those four

[11] occurred since the Grossbaum baby was born?

[12] A One, I think, I'm pretty sure.

[13] Q Okay. And the Grossbaum baby is one, and

[14] are you suggesting that there were two others, prior to

[15] the Grossbaum baby being born?

[16] A I believe so, yes.

[17] Q Okay. Now, other than these four, I take

[18] it that -- withdraw the question.

[19] I take it that the work of doing PGD testing has

[20] taken place, in your experience, since the date that

[21] you opened Genesis Genetics, when you left Georgetown,

[22] is that right?

[23] A Oh, it's been going on since I invented the

[24] technology, 19 years ago.

[25] Q Okay. And how many babies have come to

Direct - Mark R. Hughes, M.D., Ph.D.

Page 20

[1] for 90, it depends on where the sample is sent.

[2] Q Okay.

[3] A Now, that's the risk of finding a mutation in

[4] the gene. So I'll give you a little biology lesson.

[5] If you screen the woman, and you don't find a mutation

[6] with a test that has a 95 percent accuracy, and you

[7] screened the man, and you don't find a mutation that

[8] has that, has a 95 percent accuracy, then the chances

[9] that both of them have a mutation in the 5 percent

[10] become quite small, so their background risk goes from

[11] 1 in 25 that the general population of Caucasians have

[12] a cystic fibrosis mutation substantially less, so their

[13] risk of having a child with CF goes from 1 in 2500 to

[14] significantly less, but not zero.

[15] Q Okay. In connection with your work doing

[16] PGD testing, is the religious background of the subject

[17] parents ever taken into consideration?

[18] A No, not at all.

[19] Q And you don't solicit that information, is

[20] that correct?

[21] A No, it's -- no, not at all. In fact, I

[22] sometimes worry it would be illegal to start asking

[23] personal questions like that for a laboratory, so we

[24] don't. The only time I find out if a patient, for

[25] example, is Jewish is that there's a large charity in

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1 IN THE UNITED STATES DISTRICT COURT

2 IN THE DISTRICT OF NEW JERSEY

3 -----/

4 CHAYA GROSSBAUM and MENCHEN

5 GROSSBAUM, Her Spouse, Individually, and

6 as Guardian ad litem of the Infant, ROSIE

7 GROSSBAUM,

8 Plaintiffs,

9 -vs- Index No. 07-CV-359

10 GENESIS GENETICS INSTITUTE, LLC,

11 OF THE STATE OF MICHIGAN, MARK R.

12 HUGHES, M.D., NEW YORK UNIVERSITY

13 SCHOOL OF MEDICINE, and NEW YORK

14 UNIVERSITY HOSPITALS CENTER, both

15 Corporations of the State of New York,

16 ABC CORPORATIONS: 1-10 and John Doe,

17 Defendants.

18 _____/

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20 PAGE 1 - 82

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22 The Deposition of DR. MARK HUGHES,

23 Taken at 1380 Trowbridge Place,

24 Detroit, Michigan,

25 Commencing at 12:55 p.m.,

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1 Friday, May 14, 2010

2 Before Laura J. Steenbergh, CSR-3707, RPR, CRR, RMR

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4 APPEARANCES:

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18 1380 East Jefferson Avenue

19 Detroit, Michigan 48207

20 BY: STEPHEN LEUCHTMAN, ESQ.

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1 obvious what was going on, and so --

2 Q. Did you continue to work with embryos after it became
3 government policy not to allow that type of research at
4 the NIH?

5 A. I don't know anything about the policies of when it was
6 or when it wasn't. What I know is that when the decision
7 was made that we shouldn't do this at the NIH, or have a
8 faculty member -- or, not a faculty member -- a staff
9 member of the NIH doing it even across the street at the
10 Samaritan Hospital because of the political issues
11 involved, I was asked to resign.

12 Q. Were you using NIH offices to conduct the research that
13 you were doing contrary to government policy?

14 A. No. I was using the offices at Georgetown.

15 Q. Okay. Now, turning to your deposition, Exhibit P1, which
16 is your report, three-page report, in the paragraph
17 before the bottom of the first page that begins, I spoke
18 with the Grossbaums and conducted the interview that you
19 have described in your report, I take it that that
20 conversation lasted for some time?

21 A. They usually last a good hour, sometimes longer.

22 Q. Okay. Now, that is, obviously, direct contact between
23 you and what would become your patient when they sent the
24 laboratory materials from NYU, is that correct?

25 A. Not exactly.

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1 with the patient constitutes practicing medicine?

2 A. I don't have a license in Michigan to practice medicine.

3 I don't practice medicine. I happen to have an MD, but

4 what I do is science, it's my PhD. I don't practice

5 medicine.

6 Q. And you don't consider the providing informed consent to

7 the patient who's going to be a prospective submitter of

8 materials for laboratory analysis to be practicing

9 medicine, is that right?

10 A. Not even remotely. It's more like a genetic counselor.

11 That's why we don't talk to the patient during or after

12 the case.

13 Q. Okay. Now, when you said -- and you have a copy of your

14 letter in front of you?

15 A. Yeah.

16 Q. And you say in that paragraph that -- you explained, to

17 quote you, I explained the technology involved isn't

18 perfect and pushes medical diagnostic technology to its

19 absolute limit.

20 Can you tell me what you mean by that?

21 A. Yes. Unlike testing that's done in almost any other

22 field of medicine, we're studying the smallest unit of

23 life, one cell. And we're studying it for the smallest

24 unit of inheritance, one gene. And we're studying it for

25 the smallest possible part of a gene, changes of a single